

STATE OF CALIFORNIA  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

**PERMIT FOR DIVERSION AND USE OF WATER**

**PERMIT 21177**

Application **30422** of

**Robert and Carolyn Henkel  
P.O. Box 609  
Angels Camp, CA 95222**

filed on **December 28, 1994**, has been approved by the State Water Resources Control Board (State Water Board) SUBJECT TO PRIOR RIGHTS and to the limitations and conditions of this permit.

**Permittee is hereby authorized to divert and use water as follows:**

1. Source of water

Source:

**Cherokee Creek**

Tributary to:

**South Fork Calaveras River thence**

**New Hogan Reservoir thence**

**Calaveras River thence**

**San Joaquin River**

within the Counties of **Calaveras**.

2. Location of point of diversion

By California Coordinate System of 1927 in Zone 3	40-acre subdivision of public land survey or projection thereof	Section (Projected)*	Township	Range	Base and Meridian
<b>North 580,300 feet and East 1,982,700 feet</b>	<b>SE¼ of SE¼</b>	<b>20</b>	<b>3N</b>	<b>13E</b>	<b>MD</b>

3. Purpose of use	4. Place of use	Section (Projected)*	Township	Range	Base and Meridian	Acres
<b>Irrigation</b>						
<b>Frost Protection</b>	<b>NE¼ of SE¼</b>	<b>20</b>	<b>3N</b>	<b>13E</b>	<b>MD</b>	<b>13</b>
	<b>NW¼ of SW¼</b>	<b>21</b>	<b>3N</b>	<b>13E</b>	<b>MD</b>	<b>3</b>
					<b>Total</b>	<b>16</b>
<b>Stockwatering</b>						
<b>Recreation</b>	<b>Reservoir within SE ¼ of SE ¼</b>	<b>20</b>	<b>3N</b>	<b>13E</b>	<b>MD</b>	

The place of use is shown on map on file with the State Water Board.

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 36.4 acre-feet per annum to be collected from November 1 of each year to April 30 of the succeeding year.  
(0000005C)  
  
This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose.  
(0000005I)  
  
The capacity of the reservoir covered under this permit shall not exceed 36.4 acre-feet.  
(0000005N)
6. Construction work and complete application of the water to the authorized use shall be prosecuted with reasonable diligence and completed by December 31, 2016.  
(0000009)
7. The State Water Board reserves jurisdiction to impose conditions to conform this permit to State Water Board policy on use of water for frost protection. Action by the State Water Board will be taken only after notice to interested parties and opportunity for hearing.  
(0000020)
8. Permittee shall install and maintain an outlet pipe of adequate capacity in the dam as near as practicable to the bottom of the natural stream channel, or provide other means satisfactory to the State Water Resources Control Board, in order that water entering the reservoir which is not authorized for appropriation under this permit can be released. Before storing water in the reservoir, permittee shall furnish evidence which substantiates that the outlet pipe, or alternative facility, has been installed in the dam. Evidence shall include photographs showing completed works or certification by a registered Civil or Agricultural Engineer.  
(0050043B)
9. This permit is subject to prior rights. Permittee is put on notice that, during some years, water will not be available for diversion during portions or all of the season authorized herein. The annual variations in demands and hydrologic conditions in the San Joaquin River Basins are such that, in any year of water scarcity, the season of diversion authorized herein may be reduced or completely eliminated by order of the State Water Board, made after notice to interested parties and opportunity for hearing.  
(0000090)
10. No diversion is authorized by this permit under the following conditions: (1) when in order to maintain water quality in the San Joaquin River at Vernalis at a level of 500 parts per million (ppm) Total Dissolved Solids (TDS), the Bureau of Reclamation is releasing stored water from New Melones Reservoir or is curtailing the collection of water to storage, or (2) during any time of low flows when TDS levels at Vernalis exceed 500 ppm. These restrictions shall not apply when, in the judgment of the State Water Resources Control Board, curtailment of diversion under this permit will not be effective in lowering the TDS at Vernalis, or when in the absence of permittee's diversion, hydraulic continuity would not exist between permittee's point of diversion and Vernalis. The Board shall notify permittee at any time curtailment of diversion is required under this term.  
(0000093)
11. The Permittee shall obtain a streambed alteration agreement, or waiver thereof, from the California Department of Fish and Game prior to any work on the dam. A copy of such agreement shall be forwarded to the Chief, Division of Water Rights with the Progress Report by Permittee form.  
(0000203)

12. Should any buried archeological materials be uncovered during project activities, such activities shall cease within 100 feet of the find. Prehistoric archeological indicators include: obsidian and chert flakes and chipped stone tools; bedrock outcrops and boulders with mortar cups; ground stone implements (grinding slabs, mortars and pestles) and locally darkened midden soils containing some of the previously listed items plus fragments of bone and fire affected stones. Historic period site indicators generally include: fragments of glass, ceramic and metal objects; milled and split lumber; and structure and feature remains such as building foundations, privy pits, wells and dumps; and old trails. The Chief of the Division of Water Rights shall be notified of the discovery and a professional archeologist shall be retained by the Permittee to evaluate the find and recommend appropriate mitigation measures. Proposed mitigation measures shall be submitted to the Chief of the Division of Water Rights for approval. Project-related activities shall not resume within 100 feet of the find until all approved mitigation measures have been completed to the satisfaction of the Chief of the Division of Water Rights.

(0000215)
13. The amount of water diverted under this permit shall be deducted from the amount of water authorized for diversion under Permit 15012 issued to Calaveras County Water District pursuant to Application 11792A

(000000Q)

**ALL PERMITS ISSUED BY THE STATE WATER RESOURCES CONTROL BOARD ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:**

- A. The amount authorized for appropriation may be reduced in the license if investigation warrants. (0000006)
- B. Progress reports shall be submitted promptly by permittee when requested by the State Water Board until a license is issued. (0000010)
- C. Permittee shall allow representatives of the State Water Board and other parties, as may be authorized from time to time by said State Water Board, reasonable access to project works to determine compliance with the terms of this permit. (0000011)
- D. Pursuant to California Water Code sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the State Water Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the State Water Board also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest; and is necessary to preserve or restore the uses protected by the public trust.

(0000012)

- E. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Board if, after notice to the permittee and an opportunity for hearing, the State Water Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the State Water Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

(0000013)

- F. This permit does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & G. Code, §§ 2050 - 2097) or the federal Endangered Species Act (16 U.S.C.A. §§ 1531 - 1544). If a "take" will result from any act authorized under this water right, the permittee shall obtain authorization for an incidental take prior to construction or operation of the project. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit. (0000014)
- G. Permittee shall maintain records of the amount of water diverted and used to enable the State Water Resources Control Board to determine the amount of water that has been applied to beneficial use pursuant to Water Code Section 1605. (0000015)
- H. No work shall commence and no water shall be diverted, stored or used under this permit until a copy of a stream or lake alteration agreement between the State Department of Fish and Game and the permittee is filed with the Division of Water Rights. Compliance with the terms and conditions of the agreement is the responsibility of the permittee. If a stream or lake agreement is not necessary for this permitted project, the permittee shall provide the Division of Water Rights a copy of a waiver signed by the State Department of Fish and Game. (0000063)

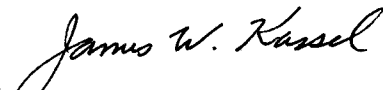
***This permit is issued and permittee takes it subject to the following provisions of the Water Code:***

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefore shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

**STATE WATER RESOURCES CONTROL BOARD**

  
for Victoria A. Whitney  
Division Chief

Dated: MAY 17 2006